

1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 STATE OF OKLAHOMA, ex rel,)
 4 W.A. DREW EDMONDSON, in his)
 capacity as ATTORNEY GENERAL)
 5 OF THE STATE OF OKLAHOMA,)
 et al.)
 6)
 Plaintiffs,)
 7)
 V.) No. 05-CV-329-GKF-SAJ
 8)
)
 9 TYSON FOODS, INC., et al.,)
)
 10)
 Defendants.)

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 12
 13 REPORTER'S TRANSCRIPT OF PROCEEDINGS

14 FEBRUARY 21, 2008

15 PRELIMINARY INJUNCTION HEARING

16 VOLUME III

17
 18 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

19
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LOWELL MARK CANEDAY

1 been met and that the rules of evidence have been met, of
2 course, with relaxed rules of evidence with regard to relevancy
3 and maybe less so on reliability. Many documents will come in
4 in a preliminary injunction proceeding that might not otherwise
5 come in in a trial.

6 But Ms. Southerland, before we begin this afternoon,
7 the Court will have you make a list of all those exhibits which
8 have been offered in cross-examination and not yet admitted.
9 And then I'll expect counsel to look at those and then we need
10 to make a final determination before we begin this afternoon.

11 MS. SOUTHERLAND: Yes, Your Honor.

12 THE COURT: The witness will retake the stand. And
13 Mr. McDaniel, you may resume your inquiry.

14 MR. MCDANIEL: Good morning, Your Honor.

15 THE COURT: Good morning.

16 GORDON VERNON JOHNSON

17 Called as a witness on behalf of the plaintiffs, being first
18 duly sworn, testified as follows:

19 FURTHER CROSS-EXAMINATION

20 BY MR. MCDANIEL:

21 Q. Good morning, Dr. Johnson.

22 A. Good morning.

23 Q. I hope you rested well, sir.

24 A. I did.

25 Q. Just a couple of quick points, sir, that I wanted to close

1 Q. Now, Oklahoma State University provides recommendations
2 and counsel to both the Oklahoma Department of Agriculture,
3 Food and Forestry and the NRCS with regard to nutrient
4 management. Do you agree?

5 A. Yes.

6 Q. And both the regulations in Oklahoma and the NRCS Code 590
7 do not restrict poultry litter utilization to a strict 65 STP
8 threshold, do they?

9 A. That's true.

10 Q. Now, you've never actually conducted any research on a
11 modern phosphorus index, have you, Dr. Johnson?

12 A. On the phosphorus index as it's used in measuring relative
13 risk for animal waste, no. And the reason I want to specify
14 that is because the numbers in Fact Sheet 2225 for decades were
15 identified as a phosphorus index before the other concept of a
16 phosphorus index came into being.

17 Q. All right. Now, Dr. Johnson, you're not here today to
18 speak for Oklahoma State University, are you?

19 A. No.

20 Q. And no one with speaking authority for Oklahoma State
21 University has told you that they agree with your opinion that
22 all poultry litter should be removed from the Illinois River
23 Watershed; right?

24 A. That's right.

25 Q. And of all the university and NRCS scientists who are

1 studying nutrient management in this region, you can't identify
2 a single one who has endorsed your view that 100 percent of the
3 poultry litter should be removed from the Illinois River
4 Watershed?

5 A. That's true.

6 Q. And there's been no head of any Oklahoma environmental
7 regulatory agency who's expressed to you that they agree with
8 your opinion that all the poultry litter should be exported
9 from the Illinois River Watershed?

10 A. That's true.

11 Q. Thank you.

12 MR. MCDANIEL: That concludes my examination, Your
13 Honor. I recognize that when I first came up we didn't make a
14 very good record for the Court on the numbers of those
15 exhibits, defendants' exhibits. I'd like to identify them for
16 you, please.

17 THE COURT: Please, if you would.

18 MR. MCDANIEL: The defendants' exhibits that I
19 referenced and that the State has stipulated to the admission
20 are 1, 2, 3, 4, 6, 13, 14, 18 and 21.

21 THE COURT: Very well. Under the previous
22 stipulation, Defendants' Exhibits 1, 2, 3, 4, 6, 13, 14, 18 and
23 21 are recognized as having been previously admitted.

24 MR. MCDANIEL: Thank you.

25 MR. NANCE: Your Honor, if I did not indicate 87, that

1 was the second one I discussed with Mr. Johnson. I just wanted
2 to make sure it was in the record as well.

3 THE COURT: Yes, sir, and that's Plaintiffs' Exhibit
4 87?

5 MR. NANCE: Yes, Your Honor.

6 THE COURT: Has been previously admitted.
7 Mr. Bullock.

8 MR. BULLOCK: Judge, before we call the next witness,
9 one matter for the record. In terms of the element of proof as
10 to a person as defined by 42 USC Section 6901, subparagraph 15,
11 we would call the Court's attention to the defendants' answers
12 to the second amended complaint. And I will give you the
13 docket number and the paragraph for the record. As for
14 Peterson, it's Docket No. 1236, paragraph 16. As for George's,
15 it's Docket No. 1237, paragraphs 14 and 15. As for Tyson
16 defendants, it is Docket No. 1238, paragraphs 6 to 9.
17 Cal-Maine defendants, Docket No. 1239, paragraphs 10 and 11.
18 Cargill defendants, it's Docket No. 1241 and 1242 for both
19 documents, paragraphs 12 and 13. For Willow Brook, Docket No.
20 1242, paragraph 18. And for Simmons, Docket No. 1243,
21 paragraph 17. In those answers you will find that all of them
22 have admitted to some type of corporate form.

23 THE COURT: Thank you. And Mr. Jorgensen, after
24 having seen the map yesterday, I now understand Willow Brook
25 only had operations and apparently turkey operations only in